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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN WAYNE GRIFFITH,

Defendant and Appellant.

F071601

(Kings Super. Ct. No. 10CM3835)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Robert S. Burns, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J., and Poochigian, J.

INTRODUCTION

Appellant Adrian Wayne Griffith pled no contest to two counts of lewd and lascivious acts on a child under the age of 14 years, violations of Penal Code section 288, subdivision (a),¹ in exchange for dismissal of a third charge and a five-year maximum prison term. Griffith appealed and appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Griffith was convicted by a jury of two felony counts of violating section 288, subdivision (a), and one misdemeanor count of violating section 647.6, subdivision (a)(1). He appealed these convictions and in an unpublished decision in case No. F065002, this court reversed the judgment in its entirety and remanded the matter for a new trial.

After remand, the matter was set for a hearing on April 11, 2014, and an order requiring Griffith's transportation from prison for the hearing was issued. At that hearing, a jury trial was scheduled to commence on June 3, 2014.

At a pretrial conference on April 22, 2014, Griffith served notice of intent to file a motion to disqualify the judge pursuant to Code of Civil Procedure section 170.1. The motion was filed on April 23, 2014. No order on the motion appears in the file, but it apparently was granted as all further hearings were held before a different judicial officer and the trial dates were vacated.

On November 17, 2014, the parties entered into a negotiated disposition. It was agreed that Griffith would plead guilty to both counts of violating section 288, subdivision (a). It was stipulated that he would receive the low term of three years on one count and a two year consecutive term on the second count, for a total of five years,

¹ All statutory references are to the Penal Code.

with credit for all the time he had served either in the county jail or the Department of Corrections.

Prior to accepting Griffith's plea, the trial court described the various fines and fees that would be imposed, including victim restitution, and stated that Griffith would be given credit for any amounts he previously had paid. The trial court asked Griffith "does that make sense to you" and Griffith responded affirmatively.

The trial court then proceeded to explain to Griffith his constitutional rights and to accept a waiver of those rights. It also was explained to Griffith that he would be required to register as a sex offender under section 290 and that failure to register was a crime. The consequences of entering into a plea were explained to Griffith.

Griffith was asked if he had discussed the case, possible defenses, and the plea with his attorney. Griffith responded "Yes." When asked if he needed more time to talk with his attorney, Griffith and his attorney conferred privately. After this conversation, Griffith responded, "No, your Honor" to the question. Griffith was asked if he had any questions of the court and Griffith responded "no."

When he entered his plea, Griffith pled no contest and the trial court informed him a no contest plea would be treated as a guilty plea. Griffith indicated he understood. The trial court accepted the plea and dismissed the remaining counts and allegations. Sentencing was scheduled for a later date.

At the January 6, 2015 sentencing hearing, the trial court imposed a three-year term on the count 1 offense and a consecutive two years for the count 2 offense. Various fines and fees were imposed: a \$1,000 restitution fine pursuant to section 1202.4; a \$1,000 fine pursuant to section 1202.45 suspended; an \$80 court operations fee; \$60 court facilities assessment; a \$300 fine pursuant to section 290.3; and a \$300 assessment pursuant to section 1464.

In addition, the trial court imposed a surcharge of \$60 pursuant to section 1465.7. Government Code penalties were imposed; \$210 per section 76000; \$150 per section 70372; \$30 per 76104.6; and \$120 per section 76104.7. The trial court ordered victim restitution to the victim, payable to the victim's mother, in the amount of \$1,020 and 1,708 payable to the Victim Compensation Board. Further restitution was reserved.

Griffith was awarded total custody credits of 1,042 days.

The dollar amount of the fines, fees, and assessments were the amounts recommended in the stipulated prison report filed by the probation department on December 29, 2014. No objection was raised to any of the fines, fees, penalties, or restitution amounts at the sentencing hearing, or the custody credits.

Griffith filed a notice of appeal on March 2, 2015, asking that the trial court review the custody credits awarded and the amount of fees and restitution. The request for a certificate of probable cause was denied.

The trial court responded to the notice of appeal and request for a certificate of probable cause with a letter to Griffith and an amended abstract of judgment. The trial court did not revise any of the fines, fees, assessments, or restitution amounts, but it did award additional custody credits. The total credits awarded was increased to 1,145 days.

DISCUSSION

Appellate counsel was appointed July 15, 2015. On August 28, and August 31, 2015, appellate counsel sent letters to the trial court requesting the \$120 DNA assessment under Government Code section 76104.7 be reduced. Griffith's appellate counsel asserted that the assessment had to be calculated under the version of the code section in effect in 2010, the date of the offense, and the maximum assessment was \$90.

The trial court reviewed the letters from appellate counsel and the applicable case authority and issued an order on August 30, 2015, reducing the DNA assessment to \$90

and ordering a corrected abstract prepared and filed. The corrected abstract was filed on November 13, 2015.

Subsequently, on November 5, 2015, appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d at p. 436. On that same date, this court issued its letter to Griffith inviting him to submit supplemental briefing. Griffith submitted supplemental briefing, stating he felt he was “pressured into taking a plea deal;” was under the impression he “would get 1 strike” and “not 2 strikes” as a result of the plea agreement; and felt the credit and restitution fine issues were “overlooked.”

There is no indication in the record that Griffith was under duress when he entered into the plea. He verified that he had been given an adequate opportunity to discuss the case and consequences of the plea with his attorney; conferred with his attorney again during the proceeding prior to entering a plea; and stated that no one had made any threats or promises in order to induce him to enter into the plea. Feeling pressured to enter into a plea does not constitute duress; Griffith was under the same pressure as every other defendant faced with the option of going to trial or accepting a plea bargain. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.)

As for Griffith’s contention regarding “strikes,” Griffith was aware that he was pleading to two offenses and that a term of imprisonment would be imposed for both offenses. He specifically pled to two felony violations of section 288, subdivision (a). Griffith told the trial court he had discussed the consequences of his plea with his attorney. There is nothing in the record that demonstrates Griffith was misled and on a silent record, we do not assume defense counsel rendered ineffective assistance. Any claim of ineffective assistance must be raised in a petition for writ of habeas corpus. (*People v. Dickey* (2005) 35 Cal.4th 884, 926.)

As for the credit and restitution issues, appellate counsel thoroughly reviewed these, as did the trial court, resulting in an increase in the number of days of credit and a

decrease in the amount of an assessment. An abstract of judgment reflecting these changes has been filed.

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The amended judgment filed November 13, 2015, is affirmed.